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November 9, 2021

EIG Energy Fund XIV, L.P., et al. v. Keppel Offshore & Marine Ltd.,
Case No. 1:18-cv-01047 (PGG) (SDNY)

Dear Judge Gardephe:

We write on behalf of Defendant Keppel Offshore & Marine Ltd. (“Keppel”) in the above-referenced action. We respectfully submit this letter, pursuant to Part II of Your Honor’s Individual Rules of Practice, to request permission to file under seal certain supporting materials to Keppel’s Motion for Summary Judgment (“Keppel’s Motion”) and EIG’s Motion for Summary Judgment (“EIG’s Motion”) for the reasons outlined below.¹ To comply with Part II(B) of Your Honor’s Individual Rules of Practice (“Your Honor’s Rules”), copies of the documents with proposed redactions are being publicly filed and unredacted documents with the redactions highlighted are being electronically filed under seal. Keppel is also submitting one set of courtesy copies to chambers in accordance with Part VI(D) of Your Honor’s Rules. The parties met and conferred for approximately one hour in total in early November to discuss the scope of this motion, and EIG has informed Keppel that it consents to this motion.

Keppel seeks only to file under seal certain personal identifying information of employees and agents of Keppel and its affiliated entities, including names, titles, email addresses, contact information and banking details. (See Ex. A for a list of affected materials.) This request is made in accordance with Part II(B) of Your Honor’s Rules, which states that “any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justified the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents.”

¹ In response to requests from EIG during the parties’ meet and confers, Keppel has redacted and filed under seal certain documents and information concerning EIG. Keppel does not object to EIG’s requests and refers to EIG’s November 9, 2021 letter motion for the reasons underlying EIG’s requests.

The Second Circuit applies a three-part test to determine whether to place documents under seal. First, a court must determine whether the document is a “judicial document” to which there is a presumption of access. Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119 (2d Cir. 2006). Second, if there is a presumption of access, the court must weigh the presumption in light of “the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts”. Id. Third, the court must balance the weight of the presumption of access against competing considerations such as “the danger of impairing law enforcement or judicial efficiency and the privacy interests of those resisting disclosure”. Id. Finally, judicial documents submitted in support of or opposition to a motion for summary judgment “may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest”. Id. at 120-21.

In this case, the Second Circuit’s three-part test weighs in favor of granting Keppel’s narrowly tailored motion to seal, in order to protect the privacy interests of individuals described in the parties’ summary judgment papers.

Although the materials filed in support or opposition to a motion for summary judgment are “judicial documents” to which the presumption of public access applies,² an analysis of the material at issue and its resultant value to those monitoring the federal courts weighs in favor of granting Keppel’s request to seal personal identifying information. The personal identifying information Keppel seeks to redact is not necessary for the Court or the public to evaluate the underlying allegations, which relate to Keppel, irrespective of the personal identities of specific individuals. Therefore, the public interest in access to this information is minimal, while the privacy interests of the individuals named are substantial. See Cohen v. Gerson Lehman Grp. Inc., No. 09-CV-4352, 2011 WL 4336679, at *2 (S.D.N.Y. Sept. 15, 2011) (observing that “individual contact information . . . is not at issue in this dispute and the individuals have a countervailing privacy interest in their non-disclosure”.); see also Thompson v. Spota, No. CV 14-2473, 2018 WL 4039316, at *3 (E.D.N.Y. Aug. 23, 2018) (“One benchmark for judging the importance of privacy right is ‘the degree to which the subject matter is traditionally considered private rather than public’” (quoting In re Savitt/Adler Litig., No 95-CV-1842, 1997 WL 797511, at *2 (N.D.N.Y. Dec. 23, 1997))).

Under the applicable case law, a court must “balance competing considerations, including “the privacy interests of those resisting disclosure”, against [the presumption of access]”. Lugosch, 435 F.3d at 120 (quoting United States v. Amodeo, 71 F.3d 1044, 1050 (2d Cir. 1995)). Courts have repeatedly recognized that “identifying information such as names, addresses, and other personal information” falls “within the ambit of privacy concerns”. Burgess v. Town of Wallingford, No. 11-CV-1129, 2012 WL 4344194, at *10 (D. Conn. Sept. 21, 2012) (quoting Associated Press v. U.S. Dep’t of Def., 554 F.3d 274, 284 (2d Cir. 2009)); see also Lexington Furniture Indus., Inc. v. Lexington Co., AB, No. 19- CV-6239, 2021 WL 1143694, at *3 (S.D.N.Y. Mar. 24, 2021) (directing the parties to submit an exhibit that redacted an “individual’s personal identifying information”). The Second Circuit has observed that the

² Judicial documents are those that are “relevant to the performance of the judicial function and useful in the judicial process”. Lugosch, 435 F.3d at 119. “[D]ocuments submitted to a court in support of or in opposition to a motion for summary judgment are judicial documents.” Id. at 126.

privacy interests of third parties and defendants “should weigh heavily in a court’s balancing equation in determining what . . . should remain sealed or should be redacted”. United States v. Biaggi (In re New York Times Co.), 828 F.2d 110, 116 (2d Cir. 1987).

Documents submitted in connection with the parties’ motions for summary judgment reference the identities and other personal identifying information of employees and agents of Keppel and its affiliates. Disclosure of this personal identifying information poses a privacy concern to the individuals named in certain judicial documents.³ For example, “when placed on the Internet”, personal identifying information “might provide a means for unwanted access to those individuals named”. Burgess, 2012 WL 4344194, at *11. Moreover, the proposed redactions are narrowly tailored to protect only information reasonably likely to pose privacy concerns if revealed: names, position titles, email addresses, contact information and banking information.

* * *

For the forgoing reasons, Keppel respectfully requests that the Court grant permission to file under seal the portions of documents reflecting personal identifying information as described above that, if revealed, would harm the privacy interests of nonparties.

Respectfully,

/s/ Peter Barbur

Peter T. Barbur

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square

³ Courts have recognized that parties’ expectations of privacy, founded on statutory protections, are relevant to the balancing equation. See In re Savitt/Adler Litig., No. 95-CV-1842, 1997 WL 797511, at * 4 (N.D.N.Y. Dec. 23, 1997) (observing that while a state law “statutory guarantee of privacy does not trump the public’s First Amendment right of access”, it is significant that the law creates an “expectation of privacy” in the covered records). The individuals whose information Keppel seeks to protect similarly have a heightened privacy interest because of the privacy protections available in their home country. Singapore’s Personal Data Collection Act imposes limits on the ability of private organizations to produce or reveal personal and employee data. See Personal Data Protection Act (No. 26 of 2012) s 13(a)-(b). Although the law recognizes an exception that permits disclosure in the context of litigation, Singapore does not involve expansive discovery comparable to civil litigation in the United States, and as such, the individuals whose information Keppel seeks to protect have a heightened privacy interest by virtue of their heightened expectation of privacy under Singapore law.

New York, NY 10007

VIA ECF

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VIA ECF AND EMAIL

Exhibit A

| EIG's Summary Judgment Papers |
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| Plaintiff's Memorandum of Law |
| Appendix to Plaintiff's Rule 56.1 Statement |
| Plaintiff's Rule 56.1 Statement |
| Plaintiffs' Memorandum in Opposition to Keppel Motion for Summary Judgment |
| Plaintiffs' Appendix of Additional Exhibits in Opposition to Keppel Motion for Summary Judgment |
| Plaintiffs' Response to Defendant's Rule 56.1 Statement and Additional Facts |
| Reply Memorandum in Further Support of Plaintiffs' Motion |
| Appendix to Plaintiffs' Reply to Keppel Counterstatement of Facts |
| Plaintiffs' Reply to Keppel Counterstatement of Facts |
| Goldman Declaration Exhibit A - KEPPEL00013178 |
| Keppel's Summary Judgment Papers |
| Defendant's Memorandum of Law In Support of Summary Judgment |
| Defendant's Appendix of Exhibits |
| Defendant's Rule 56.1 Statement |
| Declaration of D. Kumagai |
| Keppel's Opp'n to EIG Mot. for SJ |
| Keppel's Appendix of Opposition Exhibits |
| Keppel's Response to EIG Rule 56.1 Statement |
| Keppel's Reply Brief |
| Keppel's Reply 56.1 |
| EIG's Moving Exhibits |
| EIG Exhibit 4 |
| EIG Exhibit 7 |
| EIG Exhibit 8 |
| EIG Exhibit 9 |
| EIG Exhibit 11 |
| EIG Exhibit 15 |
| EIG Exhibit 21 |
| EIG Exhibit 22 |
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| EIG Exhibit 121 |
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| EIG Exhibit 133 |
| EIG Exhibit 136 |
| Keppel's Moving Exhibits |
| Keppel Exhibit 4 |
| Keppel Exhibit 5 |
| Keppel Exhibit 9 |
| Keppel Exhibit 10 |
| Keppel Exhibit 11 |
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| EIG's Opposition Exhibits |
| EIG Exhibit 137 |

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| Keppel Opp'n Exhibit 143 |
| Keppel Opp'n Exhibit 144 |
| Keppel Opp'n Exhibit 145 |

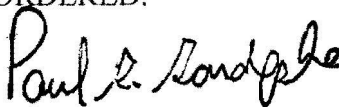
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| Keppel Opp'n Exhibit 146 |
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| Keppel Opp'n Exhibit 148 |
| Keppel Opp'n Exhibit 149 |
| Keppel Opp'n Exhibit 150 |
| EIG's Reply Exhibits |
| EIG Reply Exhibit 152 |

O GO Q'GPF QTUGF <'The parties have moved to seal their summary judgment papers and file redacted versions on the public docket. (Dkt. Nos. 96, 103) Plaintiffs state that they wish to redact “(i) confidential business information related to the operation of Sete Brasil Participações, S.A. (Sete)) that EIG is under a contractual obligation to keep confidential pursuant to confidentiality provisions of agreements entered into as part of the Sete investment; and (ii) EIG’s proprietary information limited to the identification of, or discussions concerning, EIG’s clients and confidential deals, including its analysis and strategy with respect to investment opportunities.” (Pltf. Mot. (Dkt. No. 96) at 1-2) Defendant states that it “seeks only to file under seal certain personal identifying information of employees and agents of Keppel and its affiliated entities, including names, titles, email addresses, contact information and banking details.” (Def. Mot. (Dkt. No. 103) at 1) The proposed redactions in the parties’ submissions are extensive, and include the names of officers and directors of the parties, language that merely indicates that documents exist and their titles, and what appear to be material representations about and narrative descriptions of the investment at issue in this case. The vast majority of the proposed redactions do not appear to contain any sensitive or proprietary information, the disclosure of which would cause competitive harm to the parties. As the parties’ proposed redactions are not consistent with the standard for sealing set forth in Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119 (2d Cir. 2006), both motions are denied without prejudice.

Should the parties wish to submit renewed motions to seal that are more narrowly tailored to the Lugosch standard, they must present the proposed redactions in a format that is practical for the Court to review. If the parties again propose redacting material on many pages of numerous documents, they should include either (1) an index with pin cites to the pages containing redactions; or (2) composite documents compiling the pages with proposed redactions.

The Clerk of Court is directed to terminate the motions at Dkt. Nos. 96 and 103.

SO ORDERED.



Paul G. Gardephe
United States District Judge

Dated: February 9, 2023